

MEMORANDUM OF POINTS AND AUTHORITIES

Reydel Quintana, Dat Tan Tran, and Agnes Cho (“Movant” or the “Quintana Group”) respectfully submit this memorandum in support of their motion for an Order, pursuant to Section 21D of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”):

(1) appointing the Quintana Group as Lead Plaintiff for all persons other than defendants who purchased the securities of Radient Pharmaceuticals Corporation (the “Company” or “Radient”) between January 18, 2011 and March 4, 2011, inclusive (the “Class Period”), to recover damages caused by Defendants’ violations of the federal securities laws (the “Class”); and

(2) appointing the Rosen Law Firm, P.A. as Lead Counsel for the Class.

I. PERTINENT BACKGROUND

On March 11, 2011, The Rosen Law Firm, P.A. commenced this action against Defendants¹ for claims under Sections 10(b) and 20(a) of the Exchange Act. On that same day, The Rosen Law Firm, P.A. issued a PSLRA early notice advising potential class members of, among other things, the claims alleged in this case and the 60 day deadline for class members to move this Court to be appointed as lead plaintiff. A copy of the early notice is attached as Exhibit 1 to the Declaration of Laurence M. Rosen filed herewith (“Rosen Decl.” or “Rosen Declaration”).

The complaint in the instant action (“Complaint”) alleges that Radient, a Delaware corporation headquartered in Tustin, California, and certain of its corporate officers violated the Exchange Act in connection with the Company’s

¹ “Defendants” refers to, collectively: Radient Pharmaceuticals Corporation, Douglas C. MacLellan, and Akio Ariura.

1 issuance of materially false and misleading statements about the Company's true
2 financial condition and business.

3 More specifically: The Complaint alleges that on January 18, 2011, Radient
4 issued a materially false press release indicating that the Company was
5 purportedly conducting a clinical trial of its Onko-Sure product with the
6 prestigious Mayo Clinic. Less than two weeks later, Radient announced the
7 signing of a definitive agreement for the private placement of \$8.4 million in
8 convertible notes and warrants financing.

9 On March 7, 2011, TheStreet.com issued an article disputing the
10 Company's representations in its January 18, 2011 press release. In particular, the
11 article indicated that the Mayo Clinic was **not** engaged in clinical studies with
12 Radient, and that any clinical results relating to the Onko-Sure product would be
13 provided solely by Radient, and not the Mayo Clinic.

14 Following this news, on the same day, Radient's stock price fell
15 precipitously on heavy volume from an opening price of \$.57/share to a low of
16 \$.30/share, before closing at \$.42/share – a one-day drop of \$.12/share, or
17 approximately 21%. As a result, both Plaintiffs and the Class have been damaged.

18 **ARGUMENT**

19 **II. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF**

20 The PSLRA sets forth procedures for the selection of Lead Plaintiff in class
21 actions brought under the Exchange Act. 15 U.S.C. § 78u-4(a)(3)(B). The
22 PSLRA directs courts to consider any motion to serve as Lead Plaintiff filed by
23 class members in response to a published notice of class action by the later of (i)
24 60 days after the date of publication, or (ii) as soon as practicable after the Court
25 decides any pending motion to consolidate. 15 U.S.C. § 78u-4(a)(3)(B)(i) and (ii).

26 The PSLRA provides a “rebuttable presumption” that the most “adequate
27 plaintiff” to serve as Lead Plaintiff is the “person or group of persons” that:
28

(aa) has either filed the complaint or made a motion in response to a notice . . . ;

(bb) in the determination of the Court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002).

As set forth below, Movant satisfies the above criteria, has the largest financial interest of any movant in this litigation, and is therefore the most adequate plaintiff and should be appointed as Lead Plaintiff.

A. Movant Is Willing to Serve as Class Representative

The Quintana Group has made a timely motion in response to a PSLRA early notice. *See* Rosen Decl., Ex. 1. Additionally, as set forth in the PSLRA certifications of the members of the Quintana Group filed concurrently herewith, each member attests that he or she has reviewed the complaint, adopts the allegations therein, and is willing to serve as a representative of the class. *See* Rosen Decl. Ex. 2. Accordingly, the Quintana Group satisfies the first requirement to serve as Lead Plaintiff for the class.

B. Movant Has the Largest Financial Interest in the Action

The PSLRA requires a court to adopt a rebuttable presumption that “the most adequate plaintiff . . . is the person or group ... that . . . has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii); *Cavanaugh*, 306 F.3d at 730. While the PSLRA does not specify precisely how to calculate the “largest financial interest”, the movant’s approximate losses in the subject securities is the best measure. *Richardson v. TVIA*, 2007 WL 1129344 at * 4 (N.D. Cal. Apr. 16, 2007) (citing cases). The financial interest of the Quintana Group is set forth below.

1 Reydel Quintana purchased 136,400 shares of Radient common stock
 2 during the Class Period at a cost of \$99,391.46, sold 88,330 of those shares for
 3 proceeds of \$55,542.06, and retained the remainder of 48,070 shares. Mr.
 4 Quintana thereby suffered losses in the amount of \$23,660.00². *See* Rosen Decl.,
 5 Ex. 3 (Quintana Group Loss Chart).

6 Dat Tan Tran purchased 359,776 shares of Radient common stock during
 7 the Class Period at a cost of \$263,769.60, sold 292,376 of those shares for
 8 proceeds of \$205,425.85, and retained the remainder of 67,400 shares. Mr. Tran
 9 thereby suffered losses in the amount of \$30,035.75. *See Id.*

10 Agnes Cho purchased 36,000 shares of Radient common stock during the
 11 Class Period at a cost of \$30,150.00. Ms. Cho retained all of those shares and has
 12 thereby suffered losses in the amount of \$16,542.00. *See Id.*

13 With \$70,237.75 in total losses, Movant is not aware of any other movant
 14 that has suffered greater losses in Radient stock during the Class Period. The
 15 Quintana Group is small enough that coordinated decision making will not present
 16 difficulties. The Securities and Exchange Commission has noted, and numerous
 17 courts have held, that small groups whose members all have suffered substantial
 18 losses, such as the Quintana Group, are suitable lead plaintiffs. *See e.g. In re*
 19 *Nature's Sunshine Products, Inc.*, 2006 WL 2380965 (D. Utah Aug. 16, 2006)
 20 (appointing group of three unrelated investors lead plaintiff); *In re Tyco Int'l Ltd.*
 21 *Sec. Litig.*, 2000 WL 1513772, at *4 n.7 (D.N.H. Aug. 17, 2000); *In re The First*
 22 *Union Corp. Sec. Lit.*, 157 F. Supp.2d 638, 643 (W.D.N.C. 2000); *In re Baan Co.*
 23 *Sec. Litig.*, 186 F.R.D. 214, 217 (D.D.C. 1999); *In re Universal Access, Inc., Sec.*

24 _____
 25 ² In determining losses for held shares, the Quintana Group uses the average daily
 26 closing price of Radient's common stock after the end of the Class Period to May
 27 6, 2011, \$.42. *See In re MicroStrategy, Inc. Secs. Litig.*, 110 F. Supp.2d 427, 436
 28 n. 22 (E.D. Va. 2000) (applying PSLRA look-back period price to held shares); 15
 U.S.C. §78u-4(e)(1).

1 *Lit.*, 209 F.R.D. 379, 384 (E.D. Tex. 2002); and *In re Oxford Health Plans, Inc.*
 2 *Sec. Lit.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998) (co-lead plaintiff group allows for
 3 broad representation and sharing of resources and experience).

4 Accordingly, the Quintana Group satisfies the largest financial interest
 5 requirement to be appointed as Lead Plaintiff for the class.

6
 7 **C. The Movant Satisfies the Requirements of Rule 23 of the Federal
 Rules of Civil Procedure**

8 The PSLRA further provides that, in addition to possessing the largest
 9 financial interest in the outcome of the litigation, the Lead Plaintiff must
 10 “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil
 11 Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Federal Rule of Civil
 12 Procedure Rule 23(a) provides that a party may serve as a class representative if
 13 the following four requirements are satisfied:

- 14 (1) the class is so numerous that joinder of all members is
 15 impracticable,
 16 (2) there are questions of law or fact common to the class,
 17 (3) the claims or defenses of the representative parties are typical of
 18 the claims or defenses of the class, and
 19 (4) the representative parties will fairly and adequately protect the
 20 interests of the class.

21 Fed. R. Civ. P. 23(a).

22 In making its determination that a movant satisfies the requirements of Rule
 23 23, the Court need not raise its inquiry to the level required in ruling on a motion
 24 for class certification – a *prima facie* showing that the Movant satisfies the
 25 requirements of Rule 23 is sufficient. *Cavanaugh*, 306 F.3d at 730-31. At the
 26 lead plaintiff stage, “[t]he typicality and adequacy requirements of Rule 23 are the
 27 main focus...” and “[e]xamination of the remaining requirements [of Rule 23] are

1 deferred until the lead plaintiff moves for class certification.” *Richardson*, 2007
 2 WL 1129344, at * 4 (citing *Cavanaugh*, 306 F.3d at 730)).

3 The Quintana Group and each of its members fulfill all of the pertinent
 4 requirements of Rule 23. Each member of the Quintana Group shares
 5 substantially similar questions of law and fact with the members of the class, and
 6 their claims are typical of the members of the class. Each of the Quintana Group
 7 members and all members of the class allege that Defendants violated the
 8 Exchange Act by publicly disseminating false and misleading statements about
 9 Radiant and its business. The Quintana Group and its members, as did all of the
 10 members of the class, purchased Company stock at prices artificially inflated due
 11 to Defendants’ misrepresentations and omissions, and were damaged thereby.
 12 These shared claims also satisfy the requirement that the claims of the
 13 representative parties be typical of the claims of the class.

14 Thus, the close alignment of interests between Movant and other class
 15 members, as well as the Quintana Group’s desire to prosecute this action on behalf
 16 of the class, provides ample reason to appoint the Quintana Group as Lead
 17 Plaintiff.

18 **D. The Movant Will Fairly and Adequately Represent the Interests**
 19 **of the Class and Is Not Subject to Unique Defenses**

20 The presumption in favor of appointing the Quintana Group as Lead
 21 Plaintiff may be rebutted only upon proof “by a purported member of the
 22 plaintiffs’ class” that the presumptively most adequate plaintiff:

23 (aa) will not fairly and adequately protect the interest of the class;

24 or

25 (bb) is subject to unique defenses that render such plaintiff incap-
 26 able of adequately representing the class.

27 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).
 28

1 Movant's ability and desire to fairly and adequately represent the class has
2 been discussed in Section C, above. The members of the Quintana Group are not
3 aware of any unique defenses that Defendants could raise against any of them that
4 would render them inadequate to represent the Class. Accordingly, the Court
5 should appoint the Movant as Lead Plaintiff for the Class.

6 **III. MOVANT'S SELECTION OF COUNSEL SHOULD BE APPROVED**

7 The PSLRA vests authority in the Lead Plaintiff to select and retain lead
8 counsel, subject to the approval of the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v). The
9 Court should only interfere with the Lead Plaintiff's selection when necessary "to
10 protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

11 The Quintana Group has selected The Rosen Law Firm, P.A. as Lead
12 Counsel. The Rosen Law Firm, P.A. filed the first of these related actions and has
13 been actively researching the class's and Movants' claims – reviewing publicly
14 available financial and other documents and gathering information in support of
15 the claims against the Defendants. Furthermore, the Rosen Law Firm, P.A. is
16 experienced in the area of securities litigation and class actions, having been
17 appointed as lead counsel in securities class actions in this District and in
18 numerous courts throughout the nation. The firm has prosecuted securities fraud
19 class actions and other complex litigation and has obtained substantial recoveries
20 on behalf of investors. The resume of the Rosen Law Firm, P.A. is attached as
21 Exhibit 4 to the Rosen Declaration.

22 As a result of the firm's experience in litigation involving issues similar to
23 those raised in this action, Movant's counsel has the skill and knowledge that will
24 enable the firm to prosecute this action effectively and expeditiously. Thus, the
25 Court may be assured that by approving the Quintana Group's selection of Lead
26 Counsel, the members of the class will receive the best legal representation
27 available.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Movant respectfully requests that the Court issue
3 an Order: (1) appointing the Quintana Group as Lead Plaintiff of the class; (2)
4 approving The Rosen Law Firm, P.A. as Lead Counsel; and (3) granting such
5 other relief as the Court may deem to be just and proper.

6 Dated: May 10, 2011

Respectfully submitted,

7
8 THE ROSEN LAW FIRM, P.A.

9 /s/ Laurence Rosen, Esq.

10 Laurence M. Rosen, Esq. (SBN 219683)

11 THE ROSEN LAW FIRM, P.A.

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17 [Proposed] Lead Counsel for Plaintiff

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24 **CERTIFICATE OF SERVICE**

25 I, Laurence M. Rosen, hereby declare under penalty of perjury as follows:
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1 I am the managing attorney of the Rosen Law Firm, P.A., with offices at
2 333 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. I am over the age
3 of eighteen.

4 On May 10, 2011, I electronically filed the following **MEMORANDUM**
5 **OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF THE**
6 **QUINTANA GROUP FOR APPOINTMENT AS LEAD PLAINTIFF AND**
7 **APPROVAL OF CHOICE OF COUNSEL** with the Clerk of the Court using the
8 CM/ECF system which sent notification of such filing to counsel of record.

9 Executed on May 10, 2011

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13 /s/ Laurence Rosen

14 Laurence M. Rosen
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